



August 9, 2001

Mr. Rob Baiamonte  
County Attorney  
County of Goliad  
P.O. Box 24  
Goliad, Texas 77963

OR2001-3474

Dear Mr. Baiamonte:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150523.

The Goliad County Sheriff's Department (the "department") received a request for information relating to a reported incident. You claim that the requested information is excepted from disclosure under sections 552.102 and 552.108 of the Government Code.

We first note that you failed to comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information may be withheld from public disclosure. This section provides in relevant part:

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply . . . not later than the 10<sup>th</sup> business day after the date of receiving the written request [for information].

...

(e) A governmental body that requests an attorney general decision . . . must . . . not later than the 15<sup>th</sup> business day after the date of receiving the written request [for information]:

(1) submit to the attorney general:

(A) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld;

(B) a copy of the written request for information; [and]

(C) a signed statement as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date[.]

Gov't Code § 552.301(b), (e)(1)(A)-(C). Section 552.302 of the Government Code provides that "[i]f a governmental body does not request an attorney general decision *as provided by Section 552.301* . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." (Emphasis added.)

Section 552.301(b) requires a communication addressed directly to this office, stating the exceptions that you believe are applicable to the requested information. We did not receive such a communication from you. Instead, you sent this office a copy of a letter dated June 4, 2001, that you apparently sent to the requestor. A copy of a notice to the requestor that you are seeking an attorney general decision does not suffice as a request for decision under section 552.301(b). *Compare* Gov't Code § 552.301(d). As of the date of this decision, this office also had not received (1) a copy of the request for information, (2) a signed statement as to the date on which the department received the request for information, or (3) written comments stating the reasons why the exceptions you raise would allow the requested information to be withheld.

Because you did not comply with section 552.301, the requested information is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of the information from disclosure. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). The presumption that information is public under section 552.302 generally can be overcome by demonstrating that the information is confidential by law or that third party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). You have not demonstrated that the requested information is confidential by law or that it implicates a third party's privacy or proprietary interests. *See* ORD 630 at 3. Your claim under section 552.108 of the Government Code does not constitute a compelling reason under section 552.302. *See* Open Records Decision No. 586 at 3 (1991) (stating that the need of a governmental body, other than the one that has failed to timely seek an open records decision, may in appropriate circumstances be a compelling reason for non-disclosure). Thus, you have not demonstrated any compelling reason why the requested information should not be released.

We note, however, that the submitted records contain social security numbers. A social security number may be confidential under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if the social security number was obtained or is*

*maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990.*<sup>1</sup> See Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the social security numbers in question were obtained or are maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain a social security number. We therefore have no basis for concluding that the social security numbers in question were obtained or are maintained pursuant to such a law and are therefore confidential under section 405(c)(2)(C)(viii)(I) of the federal law. We caution you, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing any of the social security numbers in question, the department should ensure that they were not obtained and are not maintained pursuant to any provision of law enacted on or after October 1, 1990.

The submitted records also contain information relating to Texas drivers' licenses. Section 552.130 of the Government Code excepts from disclosure "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). Section 552.130(a)(1) requires the withholding of information relating to a Texas driver's license. We have marked the information that comes within this exception.

We also note, however, that the requestor may be the authorized representative of one of the individuals whose social security number and Texas driver's license information appear in the submitted records. If so, then the requestor has a special right of access to that individual's social security number and driver's license information under section 552.023 of the Government Code.<sup>2</sup> Any social security number and driver's license information to which the requestor has a special right of access under section 552.023 may not be withheld from her under sections 552.101 or 552.130. This information must be released to the requestor if she presents the department with a written authorization under section 552.229 of the Government Code.<sup>3</sup>

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<sup>1</sup>Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential.

<sup>2</sup>Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."

<sup>3</sup>Section 552.229(a) provides that "[c]onsent for the release of information excepted from disclosure to the general public but available to a specific person under Section[] 552.023 . . . must be in writing and signed by the specific person or the person's authorized representative."

In summary, social security numbers that appear in the submitted documents may be confidential under section 552.101 of the Government Code in conjunction with federal law. Information relating to a Texas driver's license is excepted from disclosure under section 552.130. You must release the rest of the requested information. The requestor may also have a special right of access to some of the social security and driver's license information under section 552.023.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

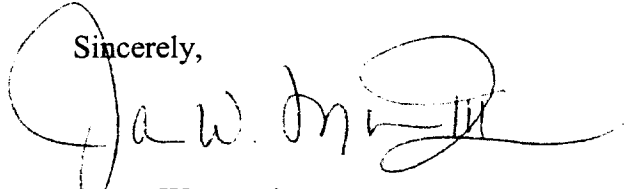
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a large initial "J" and a stylized "W".

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 150523

Enc: Submitted documents

c: Ms. Claudia Krauser  
128 Davis Avenue  
Goliad, Texas 77963  
(w/o enclosures)